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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

DEREK CLEMENTS, et.al.,
Plaintiffs,
vs.
LLOYD J. AUSTIN III,
Defendant.

Case No.: 2-22-cv-02069-RMG

**AMICUS CURIAE BRIEF IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Hon. Judge Richard M. Gergel

COMES NOW, Pritish Vora, Amicus Curiae, ("Amicus"), by way of Pro Se, files with the Honorable Court his amicus curiae brief in the above referenced matter, and states as follows:

INTEREST OF THE AMICUS CURIAE

Amicus Curiae submits this informational brief in support of the Plaintiffs DEREK CLEMENTS, CADE CLOSTER, ZACH POKRANT, JAMES VASILIU,

1 JUDSON BABCOCK, ANDY BAUMANN, LANCE CAREY, JENNIFER
2 HALL, CONNER WILBURN, JOSIAH BEGGS, AMELIA CASS, JAKE FORD,
3 EZRA PAUL, CALEB PYM, RACHEL SHAFFER, AARON STAIGER,
4 NATHAN SUESS, ROMAN PENNY, ANDREW WOJTKOW, NATHAN AIME,
5 TABITHA AIME, SOPHIA GALDAMEZ, DANYA JOHNSON and JIN
6 JOHNSON, (collectively, “Plaintiffs”), who are facing the order from the Secretary
7 of the Department of Defense (“DoD”) to become fully vaccinated with the
8 experimental Covid-19 mRNA vaccine¹ or face disciplinary action. (Hereinafter
9 for simplicity the order referred to as “the DoD mandate.”).

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11
12 Amicus provides information to this Court from publicly available sources
13 found on the following sites, including, but not limited to, FDA.gov, CDC.gov,
14 ARMY.mil, NIH.gov, and publicly available court filings on CourtListener.com
15 via its RECAP archive, which are also available on PACER.gov, of relevant facts
16 that warrant judicial notice,² and of facts that may escape the Court’s consideration
17 in determining the merits of the Plaintiffs’ motion for preliminary injunction.
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22 ¹ Amicus uses the word “vaccine” for convenience, but wholly rejects the notion of the Covid-19
23 injections being “vaccines.” They are not. These are novel therapeutics using mRNA technology
24 (e.g., Pfizer-BioNTech, Moderna) that do not use a live or attenuated virus to stimulate an
25 immune response. They are considered “biological products” and/or “drugs.” Also, Janssen (i.e.,
26 J&J) and Novavax are NOT approved.
27

28 ² See Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989). See also Fed. R. Evid.
201(c).

This brief was not authored in whole or in part by counsel for any party in this case. Amicus has not received any monetary compensation to file this brief from any source, and does so at his own time, effort and expense. Amicus can observe objectively “The Purge” happening to the brave men and women of the Armed Forces, who are being systematically discharged, regardless of rank, for simply exercising their right to refuse an experimental drug.

Apparently, Amicus is not the only person taking notice, as a growing majority of the public is now aware, and on November 30, 2022, elected Senators wrote to House leaders to “*(1) prohibit the involuntary separation of a member of the Armed Forces based solely on a service member’s COVID-19 vaccination status and to (2) reinstate those who may have already separated with back pay.*” (See Exhibit 1). Also on November 30, 2022, Elected Governors wrote to House leaders, stating in part, “*Implementation of the mandate has placed our nation’s military readiness at risk.*” (See Exhibit 2). Each letter speaks for itself.

Amicus shall focus on two distinct parts (with listed relevant subparts) for the purpose of this brief and shall provide the Court with supporting references for each to warrant granting the preliminary injunction.

1. Defendant does NOT have “FDA-approved” licensed Covid-19 vaccines.
 2. Defendant is, in fact, mandating EUA (“Emergency Use Authorization”)

Covid-19 vaccines, which have shown to cause serious side effects.

MEMORANDUM

The Court has authority to grant injunctive relief pursuant to the Federal Rules of Civil Procedure [F.R.Civ.P. 65] and review administrative decisions pursuant to the Administrative Procedures Act (“APA”). A reviewing court shall *“hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”* See 5 U.S.C. § 706(2)(A).

Unlike the majority of military vaccine mandate cases where Courts exercise extreme caution not to tread into internal military affairs, *this* case rests on whether or not a fully licensed Covid-19 vaccine was available at the time the DoD mandate *was made*, which is purely an inventory question. (Emphasis added). Indeed, it does not interfere with the “*complex, subtle, and professional decisions as to the composition, training, equipping and control of a military force,*” which the Supreme Court refers to as “*essential professional military judgments.*” See Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008).

As the Supreme Court has repeatedly emphasized, “*it is difficult to conceive an area of government activity in which courts have less competence*,” See Gilligan v. Morgan, 413 U.S. 1, 10 (1973). However, by granting preliminary relief in *this* case, as stated, a reasonable factfinder does not need to intrude into military matters. As Amicus will show, Plaintiffs are likely to succeed on the merits.

1 As the 4th Circuit has stated, *["a temporary restraining order or a]*
2 *preliminary injunction shall be granted only if the moving party clearly establishes]*
3 *entitlement."* See Di Biase v. SPX Corp., 872 F.3d 224, 230 (4th Cir. 2017).
4 (Emphasis supplied). Plaintiffs are entitled to full and fair disclosure of informed
5 consent and ensure that their rights to informed consent are not violated. In a
6 nutshell, Plaintiffs have the option to either ACCEPT or to REFUSE when
7 presented with a choice on whether or not to receive an experimental injection. See
8 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III). See Doe v. Rumsfeld, 2005 WL 1124589,
9 *1 (D.D.C. April 6, 2005) (allowing the use of anthrax vaccine pursuant to an EUA
10 “*on a voluntary basis*”).
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15 Absent a Presidential waiver, Defendant Austin lacks standing to override
16 informed consent. (Emphasis added). See 10 U.S.C. § 1107(a). There is no
17 evidence on the record that Defendant Austin either sought (or received) a waiver.
18

19 Defendant complains that “*None of the Plaintiffs have properly exhausted*
20 *available intra-service remedies, and so all of their claims are not justiciable.*”
21 (See ECF 41, Def. Op. at 18). Defendant is mistaken. The Plaintiffs’ claims are
22 pending pursuant to the APA, for which the Plaintiffs are not required to exhaust
23 intra-service remedies to bring forth their valid claims. (Emphasis added). See
24 Darby v. Cisneros, 509 U.S. 137, 146-147 (1993) (noting that APA challenges to
25 final agency action do not require exhaustion unless the underlying law being
26
27 final agency action do not require exhaustion unless the underlying law being
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1 challenged has its own exhaustion requirement). Although many of the Plaintiffs
2 have filed for Religious Accommodation Requests (“RAR”), and two have pending
3 medical exemptions, the Plaintiffs here do not seek relief pursuant to the Religious
4 Freedom Restoration Act (“RFRA”) [42 U.S.C. § 2000bb-1 *et. seq.*]. Thus, the
5 Court need not delve into the status of a pending RAR for the preliminary relief.
6

7 Defendant also complains that if the Court issues an injunction, it “*would*
8 *squarely conflict with the Supreme Court’s recent decision to partially stay a*
9 *similarly injunction in Navy SEALS 1-26.*” (See ECF 41, Def. Op. at 24). Once
10 again, Defendant is mistaken. The Supreme Court in Navy SEALS 1-26 did not
11 address the issue that the vaccines being offered to the Plaintiffs were all pursuant
12 to an EUA, which by default cannot be mandated, because **the Plaintiffs in that**
13 **case never made the claim to the trial court.** (Emphasis added). A strategic
14 decision to attack the core issue is being addressed by counsel in *this* case.
15

16 Plaintiffs are masters of the Complaint. See Fair v. Kohler Die & Specialty
17 Co., 228 U.S. 22, 23 (1913) (“*Of course the party bringing the suit is master to*
18 *decide what law he will rely upon.*”). For example, Navy SEALS 1-26 chose
19 RFRA (and 1st Amendment), whereas the Plaintiffs here chose the APA and due
20 process pursuant to the 5th Amendment. As the 6th Circuit cited in the recent Doster
21 decision, “[j]udges are not like pigs, hunting for truffles that may be buried in the
22 record.” See Dibrell v. City of Knoxville, 984 F.3d 1156, 1163 (6th Cir. 2021).
23

1 **I. DEFENDANT HAS NO FDA-APPROVED COVID-19 VACCINES**

2 Amicus respectfully requests the Court to ponder the following question:
 3 What was the product being distributed through interstate commerce and available
 4 to the Armed Forces at the time the DoD mandate was made? (Emphasis added).

5 As Plaintiffs stated, “*...a court must consider the record made before the*
 6 *agency at the time the agency acted.*” See Dow AgroSciences LLC, v. Nat'l
 7 Marine Fisheries Srv., 707 F.3d 462, 467-68 (4th Cir. 2013). (Emphasis supplied).

8 a. The FDA terminated the marketing of COMIRNATY® on the
 9 same day that it granted the marketing of COMIRNATY®.

10 A fact buried in the FDA record is that the licensed version of the Pfizer-
 11 BioNTech EUA product (i.e., COMIRNATY with a Purple Cap vial for those 16
 12 and older) was NOT ever distributed through interstate commerce, because the
 13 product was NOT manufactured. Indeed, under “Marketing Information” of the
 14 FDA package insert, the “Marketing Start Date” is listed as August 23, 2021, and
 15 the “Marketing End Date” is *also* listed as August 23, 2021. (Emphasis added).
 16 (See Exhibit 3, page from FDA package insert for the original version of
 17 COMIRNATY). For the convenience of the Court, Amicus provides a screenshot
 18 of the Marketing Information part of the FDA package insert below:

19 **Marketing Information**

| Marketing Category | Application Number or Monograph Citation | Marketing Start Date | Marketing End Date |
|--------------------|--|----------------------|--------------------|
| BLA | BLA125742 | 08/23/2021 | 08/23/2021 |

1 As counsel for Plaintiffs correctly states, the FDA “approved” the Biologics
2 License Application (“BLA”) to BioNTech GmbH on August 23, 2021. BioNTech
3 is a company located in Mainz, Germany. The application number (which
4 corresponds with the FDA package insert) is BLA125742. To clarify a
5 misstatement consistently appearing on PACER docket entries, Pfizer did NOT
6 receive approval, **BioNTech did.** (Emphasis added). Pfizer is simply an agent on
7 behalf of BioNTech. This is clearly depicted in the application for the license
8 which is a matter of public record. Indeed, troves of documents are available for
9 public view from a FOIA lawsuit, including the original COMIRNATY label.³ See
10 PHMPT v. FDA, No. 4:21-cv-01058 (N.D. TX 2021).

15 Apparently, it appears that FDA.gov has “purged” the original package
16 insert for COMIRNATY, as it is not searchable at FDA.gov or Archive.org.
17 Fortunately, it is archived on the National Institutes of Health (“NIH”) database
18 servers, and also is a matter of public record. The link to the FDA package insert is
19 at NIH.gov.⁴ The Marketing Information is on the final page of the insert.
20

22 It was therefore *impossible* for any member to comply since the DoD
23 mandate was made one day AFTER the FDA terminated the marketing of
24 COMIRNATY, and the mandate requires licensed products with proper labeling.
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26 ³ https://phmpt.org/wp-content/uploads/2022/07/125742_S2_M1_comvlabkz-vial-kzoo.pdf

27 ⁴ <https://dailymed.nlm.nih.gov/dailymed/archives/fdaDrugInfo.cfm?archiveid=595377> (last
28 visited Dec. 5, 2022).

1 In another case, the military Plaintiffs filed a motion for an evidentiary
2 hearing in the Northern District of Florida, referencing, among other relevant
3 information, the above original package insert for COMIRNATY. See Coker v.
4 Austin, No. 3:21-cv-01211-AW-HTC (N.D. Fla). (“Coker”). (See Coker, ECF
5 120).⁵ The Court DENIED the motion. (The Plaintiffs have since filed a Third
6 Amended Complaint in Coker, see ECF 129-1). It may be construed that such
7 information qualifies as “*truffles buried in the record*” and should not simply be
8 ignored to suppress the “harsh truths” pertaining to the DoD mandate.
9

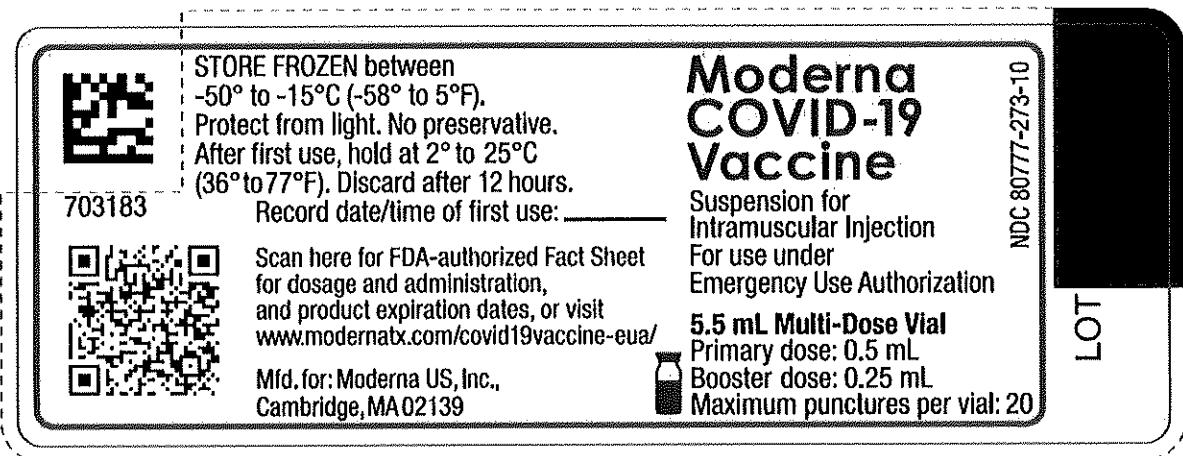
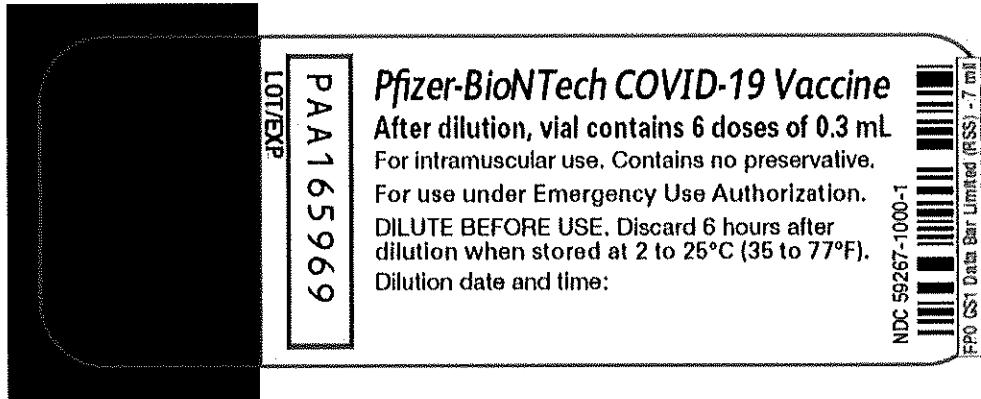
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11 b. An EUA label on a vial of a Covid-19 vaccine means what it says,
12 and says what it means, “For use under Emergency Use Authorization.” (i.e.,
13 unapproved).

14 The Armed Forces (including Plaintiffs) had several Covid-19 vaccines
15 available to them at the time Defendant Austin issued the DoD mandate; however,
16 they were all experimental as depicted by the label. Therefore, the DoD was
17 prohibited from mandating them on August 24, 2021 (or anytime thereafter). Each
18 label has a corresponding National Drug Code (“NDC”) identifier, which is easily
19 cross-referenced by the FDA.gov and NIH.gov respective databases. For example,
20 the NDC identifier for the Pfizer-BioNTech is 59267-1000. For Moderna, the NDC
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28 ⁵<https://storage.courtlistener.com/recap/gov.uscourts.flnd.409961/gov.uscourts.flnd.409961.120.0.pdf> (last visited Dec. 5, 2022).

1 is 80777-273. For the convenience of the Court, Amicus provides a screenshot
 2 below for each.

3 PFIZER-BIONTECH COVID-19 VACCINE- bht162b2 injection, suspension



21 As the Court will see, neither of these vials with the EUA labels qualifies for
 22 the DoD mandate. The Janssen, Novavax, and the newest “Bivalent booster” shots
 23 are of no help to Defendant Austin to enforce the mandate either, as ALL are
 24 pursuant to an EUA. The consistent theme for each of these products is the
 25

1 corresponding EUA fact sheet, which states as follows: “*Under the EUA, it is your*
 2 *choice to receive or not to receive the vaccine.*” (Emphasis added).

3 c. **The *ipse dixit* claims by Defendant regarding “BLA compliant,”**
 4 **“Comirnaty-labeled” and “Spikevax.”**

5 Apparently realizing that Defendant could not enforce the mandate, the DoD
 6 began a series of “workarounds.” (See, in general ECF 41, Def. Op.). The first
 7 being the “BLA compliant” vials of Pfizer-BioNTech BNT162b2. Under this
 8 hocus-pocus theory, the DoD would still mandate unlicensed and unapproved EUA
 9 vials of the Pfizer-BioNTech vaccine by simply calling it “BLA compliant.” (i.e.,
 10 the Pfizer-BioNTech vials with EUA labels subject to informed consent were
 11 promoted “as if” they were licensed vials of the non-existent COMIRNATY).

12 The term is a common theme by DoD when facing an injunction and was
 13 used by the respective Defense counsel on file in Coker. It was successful to
 14 mislead the Court in Coker to DENY the preliminary injunction. However, the
 15 record is now more factually developed in Coker, and THIS Honorable Court
 16 should not be misled by such a term. The Court may wish to disregard it as *ipse*
 17 *dixit*. See also Amicus Brief, Dkt. 19, pages 6-8 in Wilson et. al. v. Austin et. al.,
 18 No. 4:22-cv-00438-ALM (E.D. TX).⁶ (The Court in Texas accepted the filing).

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 28 ⁶<https://storage.courtlistener.com/recap/gov.uscourts.txed.214840/gov.uscourts.txed.214840.19.0.pdf>

1 The next workaround was the “Comirnaty-labeled” vials. Plaintiffs have
2 provided a thorough analysis to rebut this claim in their reply memorandum (ECF
3 45), which speaks for itself. The FDA package insert for the “Comirnaty-labeled”
4 vial (i.e., Grey Cap, Tris/Sucrose version NDC 0069-2025, which does not require
5 dilution) has **one, and only one**, FDA approved facility to manufacture, pack, and
6 dilution) has **one, and only one**, FDA approved facility to manufacture, pack, and
7 LABEL the vial. (Emphasis added). That facility is in Puurs, Belgium.⁷ Defendant
8 will fail to show (and cannot show), that the so-called “Comirnaty-labeled” vials
9 being offered to Plaintiffs were manufactured in Belgium, rendering the vials more
10 akin to a Hollywood special effect. “Comirnaty-labeled” is NOT “COMIRNATY”
11 licensed, just as “Spikevax-labeled” is NOT “SPIKEVAX® licensed.”
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14 d. **The American Medical Association (“AMA”) does NOT list either**
15 **COMIRNATY® or SPIKEVAX® on the list of respective inoculation codes**
16 **for Covid-19 immunizations, because the products DO NOT EXIST.**
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19 The AMA maintains a resource tool consisting of the existing NDC label
20 identifiers for Covid-19 immunizations. As such, any person with access to a web
21 browser may search the AMA site and look up every Covid-19 vaccine that is
22 being distributed through interstate commerce and view the corresponding NDC
23 label identifier in one place.⁸
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27 ⁷ <https://nctr-crs.fda.gov/fdalabel/ui/spl-summaries/criteria/391881> (last visited Dec. 5, 2022).

28 ⁸ <https://www.ama-assn.org/find-covid-19-vaccine-codes> (last visited Dec. 5, 2022).

1 By way of example, the AMA lists Pfizer-BioNTech with NDC label 59627-
2 1000, indicating that the product is an EUA (as shown in the screenshot earlier in
3 the brief). For Moderna, the AMA deceptively lists it as “Moderna COVID-19
4 Vaccine/Spikevax” with NDC label 80777-273. At first glance, the listing of
5 “Spikevax” provides a person with a false impression that it is the LICENSED
6 product. However, the NDC label corresponds **to the EUA version**, as also shown
7 in the screenshot in the brief. (Emphasis added). Simply stated, there are NO
8 licensed corresponding NDC labels of either COMIRNATY or SPIKEVAX on the
9 list, because the products are NOT being marketed through interstate commerce.
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12 Defendant will fail to show, and cannot show, that the members of the
13 Armed Forces were provided with the FDA-approved, licensed version of the
14 Covid-19 vaccines with proper structured product labeling. Again, this indicates
15 that if there are not any licensed versions NOW, then there were not any licensed
16 versions **at the time that DoD issued the mandate on August 24, 2021**.
17 (Emphasis added). In layman’s terms, there is a simple phrase to describe this
18 scenario: “A SHAM!”
19
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21 The same holds true for the government website, Vaccines.gov, which does
22 not have the ability to search for either COMIRNATY as a separate product or
23 SPIKEVAX as a separate product. The reason? The products DO NOT EXIST.
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1 e. **The Center For Diseases Control and Prevention (“CDC” does**
2 **NOT have a Vaccine Information Statement (“VIS”) for either COMIRNATY**
3 **or SPIKEVAX, because neither licensed product is actually available.**
4

5 CDC.gov makes a clear differentiation between a VIS and an EUA fact
6 sheet. Simply stated, a VIS is provided to a recipient who receives a licensed
7 vaccine, and an EUA fact sheet is provided to a recipient who receives an
8 unlicensed vaccine. On its site, the CDC states as follows: “*There is no VIS for*
9 *COVID-19 vaccines authorized under an EUA. Instead, the FDA-issued EUA Fact*
10 *Sheet for Recipient and Caregivers for each COVID-19 vaccine must be used.*”⁹
11

12 Plaintiffs filed the declaration of Colonel Jennifer Hall (See ECF 45-8).
13 (“Hall Decl.”). Plaintiff Hall also provided a screenshot of the CDC disclosure.
14 Plaintiff Hall states that “*the immunization clinic technician was unable to explain*
15 *why the grey cap vial did not have a Vaccine Information Statement, required by*
16 *the Air Force Instruction for licensed vaccines.*” (See Hall Decl. at pg. 2).
17

18 Pursuant to Army Regulation 40-562, under section 2-7(a)(1), Immunization
19 and chemoprophylaxis records, documents in an electronic immunization tracking
20 system includes, but it is not limited to, a VIS. (Emphasis added).¹⁰ However,
21 since a licensed Covid-19 vaccine was never made available to the Armed Forces,
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27 ⁹ <https://www.cdc.gov/vaccines/covid-19/eua/index.html> (last visited Dec. 5, 2022).

28 ¹⁰ https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r40_562.pdf (last visited Dec. 5, 2022).

1 hence a VIS was not available to Plaintiff Hall, even though she asked to see it. AR
2 40-562 is a joint service regulation that also applies to the other Services. (See ECF
3 41, Def. Op. at n.1). In essence, nobody is getting a VIS. By way of comparison,
4 and to put this in perspective, the FDA licensed vaccine available for Shingles
5 contains a corresponding VIS, rather than an EUA fact sheet.¹¹
6
7

8 **II. THE EUA COVID-19 VACCINES HAVE SIDE EFFECTS**

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10 Time and again, in District Court upon District Court, any Defendant
11 supporting a “one-size-fits-all” Covid-19 vaccine mandate, including Defendant
12 Austin, will often parrot the “CNN-driven” rhetoric that the Covid-19 vaccine is
13 “safe and effective.” First of all, the phrase “safe and effective” is a statutory term
14 (i.e., legal), and ONLY applies to licensed vaccines. Pursuant to the EUA, it states
15 that the product “*may be effective*” in treating or preventing the disease. See 21
16 U.S.C. § 360bbb-3(c)(2)(A). Based on logic and common sense, if a product “may
17 be effective,” then it also “may **NOT** be effective.” (Emphasis added).
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20 **a. The Vaccine Adverse Reporting System (“VAERS”) shows that**
21 **the Covid-19 EUA vaccines have short-term deleterious side effects, which**
22 **include, but is not limited to, DEATH.**
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11 <https://www.cdc.gov/vaccines/hcp/vis/vis-statements/shingles-recombinant.pdf> (last visited Dec. 5, 2022).

1 The VAERS database is available in the public domain through various
2 channels, including Vaers.HHS.gov,¹² OpenVaers.com,¹³ and MedAlerts.org.¹⁴
3 Regarding VAERS, the EUA fact sheet for vaccine providers (i.e., the ones who
4 administer the Covid-19 vaccines) for the Pfizer-BioNTech EUA vaccine states as
5 follows, in part: *“It is MANDATORY for vaccination providers to report to the*
6 *Vaccine Adverse Reporting System (VAERS) all vaccine administration errors, all*
7 *serious adverse events, cases of Multisystem Inflammatory Syndrome (MIS) in*
8 *adults and children, and hospitalized or fatal cases of COVID-19 following*
9 *vaccination with the Pfizer-BioNTech COVID-19 Vaccine.”*¹⁵ (See n.15, pg. 26).
10 (Emphasis added). Obviously, the phrase “following vaccination” speaks for itself,
11 and is undisputable. The recent stats from VAERS are attached as Exhibit 4.

12 On page 14 of the EUA fact sheet, the “serious adverse events” are defined
13 as: Death; A life-threatening adverse event; Inpatient hospitalization or
14 prolongation of existing hospitalization; A persistent or significant incapacity or
15 substantial disruption of the ability to conduct normal life functions; A congenital
16 anomaly/birth defect; An important medical event that based on appropriate
17 medical judgment may jeopardize the individual...”. (See n.15 at pg. 14).

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¹² <https://vaers.hhs.gov/> (last visited Dec. 5, 2022).

¹³ <https://openvaers.com/> (last visited Dec. 5, 2022).

¹⁴ <https://medalerts.org/index.php> (last visited Dec. 5, 2022).

¹⁵ <https://www.fda.gov/media/153713/download> (last visited Dec. 5, 2022).

1 As much as Defendant Austin and his agents may try and “poo-poo” the
2 VAERS data and/or the potential side-effects that may occur to members of the
3 Armed Forces (or to the public at large), the side-effects are real, and NOT rare.
4

5 Amicus respectfully requests the Court to take judicial notice of a letter sent
6 by Senator Ron Johnson (R-WI), to Defendant Austin on February 1, 2022. (See
7 Exhibit 5). The letter cites the Defense Medical Epidemiology Database (DMED),
8 and it speaks for itself. It is unknown whether Defendant Austin responded to the
9 request by Sen. Johnson regarding increases in registered diagnoses of
10 miscarriages, cancer or other medical conditions in 2021 compared to the five-year
11 average from 2016-2020.
12

13 Mandating an experimental Covid-19 vaccine that has unknown long-term
14 effects for a mostly healthy Armed Forces appears to weaken the military, NOT
15 strengthen it. (Emphasis added). Defendant Austin could have, but chose not to,
16 rescind the mandate upon NOTICE by Sen. Johnson of the increased diagnoses of
17 adverse events being reported to the DMED. Defendant Austin could have, but
18 chose not to, rescind the mandate upon NOTICE of the whistleblower affidavit.
19 (See ECF 45-1). Defendant Austin could have, but chose not to, rescind the
20 mandate upon NOTICE of the FDA.gov Purple book database showing no product
21 was “interchangeable” with COMIRNATY. (See ECF 45-22). Defendant Austin
22 cannot be rewarded for his malfeasance by a denial of the preliminary injunction.
23

SUMMARY

As this Court has opined, a preliminary injunction is granted as a remedy when “*Plaintiffs, having made a clear showing that they will likely succeed on the merits*”...are entitled to preliminary injunctive relief only if they can also make a “*clear showing*” that they are “*likely to be irreparably harmed absent preliminary relief,*” that the balance of equities tips in their favor and that preliminary relief is in their public interest.” See US v. South Carolina, 840 F.Supp. 2d 898, 924 (D.S.C. 2011) (Gergel, R.).

Plaintiffs survive all four factors to warrant relief. Whether or not a fully approved, licensed Covid-19 vaccine with proper structured product labeling was available at the time Defendant Austin issued the DoD mandate rests on a factual dispute, and thus does not require this Court to extend great deference to the military to grant Plaintiffs the relief they seek. Indeed, a simple way to address (and resolve) this issue is through the factual evidence on the record found in the publicly available documents and/or through an evidentiary hearing.

Defendant claims that Plaintiffs’ claims are not justiciable, that Plaintiffs will not succeed on the merits, and that Plaintiffs’ claims are moot. (See, in general, ECF 41). Unfortunately for Defendant, a “Comirnaty-labeled” vaccine made in an unapproved facility with an FDA label does not magically become available “as if” it is an “FDA-approved” vaccine because of the *ipse dixit* of

1 defense counsel. (Emphasis added). Besides, the Defendant made a binding
2 judicial admission to this Court (and other Courts) that “On May 20, 2022,
3 COMIRNATY-labeled became available for ordering.” (See ECF 41 at 15). So
4 then, the logical question becomes: what product *was orderable* when the DoD
5 mandate was made? This is the crux of the Plaintiffs’ position to warrant
6 immediate relief, which only preserves the status quo during the ongoing litigation.
7

8
9 The DoD mandate clearly says, “*Mandatory vaccination against COVID-19*
10 *will only use COVID-19 vaccines that receive full licensure from the Food and*
11 *Drug Administration (FDA), in accordance with FDA-approved labeling and*
12 *guidance.*” However, Defendant convolutes the issue by stating “*While EUA*
13 *vaccines may satisfy the DoD’s vaccination requirement, EUA vaccines are not*
14 *mandated.*” (See ECF 41 at 24). **But wait a minute! The DoD mandates**
15 **licensed vaccines, so an EUA vaccine cannot** “*satisfy the DoD’s vaccination*
16 *requirement.*” (Emphasis added). The Armed Services may choose to *voluntary*
17 take an EUA shot. The DoD cannot take adverse action if a member says “no.”
18

19 Plaintiffs are already suffering irreparable harm from a danger that is actual
20 or imminent (i.e., being *coerced* into an unwanted medical experiment by either
21 taking the EUA Covid-19 jab that has virtually ZERO recourse for damages for
22 serious adverse effects or losing their military careers simply because they chose
23 their lawful option to refuse). (See exhibits, ECF 45-1 to 45-21).
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1 The Supreme Court has ruled that for a Court to have subject matter
2 jurisdiction, it only requires one of the plaintiffs to have standing. See Horne v.
3 Flores, 557 U.S. 433, 446 (2009). Being discharged from the miliary can certainly
4 cause emotional distress. Defendant is not prejudiced by an injunction, thus the
5 balance of equities tips in Plaintiffs' favor. The injunction also tips in the *public's*
6 favor. Indeed, NO reasonable person wants any member of the armed forces
7 discharged for simply refusing an experimental drug, especially cadets who are just
8 embarking on their military careers.

9 An evidentiary hearing allows the Plaintiffs to further develop the factual
10 record which will assist the Court in ruling on the merits. (See ECF 47). Even
11 without a hearing on the motion, the Court may conclude from the publicly
12 available record that the DoD mandate is void *ab initio*, with the proper remedy
13 being *vacatur* of ALL prior infractions against the members of the Armed Forces
14 who faced penalty for allegedly "disobeying a lawful order."

15 As Amicus stated in his initial brief in Coker, which was accepted for filing,
16 "if a Constitutional Republic has an Executive Branch that knowingly and willfully
17 goes rogue by impinging upon the guaranteed freedoms of the people under the
18 guise of "safety and protection," then the last bastion of hope is a strong-willed
19 judiciary to provide a remedy for those seeking justice to redress a grievance."
20 (Emphasis added). (See Coker, Dkt. entry 66-1 at 22:22-28).

1 CONCLUSION

2 Based on the foregoing, it is *Defendant Austin* who failed to exhaust his
3 intra-military remedies by failing to seek the adequate remedy available to him
4 (i.e., a Presidential waiver pursuant to 10 U.S.C. § 1107(a) to override informed
5 consent). (Emphasis added).¹⁶ Thus, it is Defendant Austin who lacked any
6 legitimate compelling government interest to invoke the DoD mandate when there
7 were no FDA-approved, licensed Covid-19 vaccines available.
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10 Given the Court's inherent power to manage its docket, and pursuant to
11 F.R.Civ.P. 65, this case is perfectly ripe for an injunction, as the current political
12 attempt calling for an end to the mandate does not defeat the Plaintiffs' arguments.
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15 WHEREFORE, Amicus respectfully requests that the Court GRANT
16 Plaintiffs' second motion for preliminary injunction (ECF 34). If the Court decides
17 that a prior hearing is warranted, then Amicus respectfully requests that the Court
18 GRANT Plaintiffs' scheduling request for a hearing (ECF 47).
19

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21 Respectfully submitted on this day of: Dec. 7, 2022

22 By: Pritish Vora

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24 Pritish Vora, Amicus Curiae, Pro Se
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28 ¹⁶ Of course, by seeking such waiver, the DoD would in effect agree, affirm and admit that there
is NO licensed Covid-19 vaccine available, since the waiver is applicable *for an EUA product*.

CERTIFICATE OF SERVICE

I, Pritish Vora, Amicus Curiae, hereby certify that I sent the Amicus Brief with the referenced five (5) Exhibits to the Clerk of the Court via FedEx on December 7, 2022, with copies sent to each of the respective parties below via U.S. first class mail, postage prepaid.

Respectfully submitted by:

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